

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

United States of America,)	
)	Case No. 3:12-cr-119
Plaintiff,)	
)	ORDER DENYING MOTION FOR
vs.)	REVOCAION OF MAGISTRATE
)	JUDGE'S ORDER SETTING
Charles William Carlton,)	CONDITIONS OF RELEASE AND
)	MODIFYING CONDITIONS OF
Defendant.)	RELEASE

Before the Court is the United States' Motion for Revocation of Magistrate Judge's Order Setting Conditions of Release (Doc. #12). On December 19, 2012, the Honorable Mary Milloy, Magistrate Judge for the Southern District of Texas, issued an Order Setting Conditions of Release pending trial for Carlton. The United States immediately moved to appeal the Magistrate Judge's order (Doc. #12). Knowing only scant information about the case, this Court stayed the execution of the Magistrate Judge's Order (Doc. #15). Carlton was taken back into custody and transported to North Dakota, where an appeal hearing was held on January 31, 2013.

Argument was presented by both parties at the hearing. Upon consideration of those arguments and the evidence now available in the record, the Court declines to reverse the Magistrate Judge's order releasing Carlton pending trial. Based on the charges in this case, a statutory presumption of detention exists. 18 U.S.C. § 3142(e)(3). When a presumption of detention exists, "[A] defendant bears a limited burden of production-not a burden of persuasion-to rebut that presumption by coming forward with evidence he does not pose a danger to the community or a risk of flight." United States v. Abad, 350 F.3d 793, 797 (8th Cir. 2003) (quoting United States v. Mercedes, 254 F.3d 433, 436 (2d. Cir. 2001)). Carlton has produced ample evidence to rebut the presumption of detention. He has no history of

international travel, and his means of doing so are practically non-existent because he does not possess a passport. His criminal history is minimal. He has long-standing ties to the Houston, Texas area, including a wife and children, as well as stable employment. Further, the company at issue in this case is no longer in existence. In sum, Carlton has produced sufficient evidence to rebut the presumption of detention, meaning that the Magistrate Judge's Order shall remain in force.

The United States' motion is **DENIED**, and the Court **ORDERS** that the Magistrate Judge's Order Setting Conditions of Release remain in force, subject to the following modifications:

- Carlton shall abstain from all use of drugs and alcohol;
- At the direction of his supervising Pretrial Services Officer, Carlton shall undergo a chemical dependency evaluation and follow any recommendations that may follow;
- Carlton shall submit to mandatory drug testing at the direction of his supervising Pretrial Services Officer;
- Carlton shall not travel outside his county of residence without approval of supervising Pretrial Services Officer;
- Carlton shall have no contact with his co-defendants, the confidential informant in this case, or any other identifiable witnesses.

All other terms and conditions of Carlton's pretrial release not affected by this order remain in force.

IT IS SO ORDERED.

Dated this 31st day of January, 2013.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court